

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

03 MAR -6 PM 4:16
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

In the Matter of

V.T. ASSET MANAGEMENT, INC.
Shawnee Mission, Kansas

Respondent

)
)
)
)
)
)

Docket No. TSCA-07-2003-0085

CONSENT AGREEMENT AND FINAL ORDER

INTRODUCTION

Prior to the filing of a complaint in this matter, the parties have agreed to the settlement of an administrative cause of action for the assessment of civil penalties under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, found at 40 C.F.R. part 22. Pursuant to 40 C.F.R. § 22.13(b), it is the intent of the parties to simultaneously commence and conclude this proceeding by the issuance of this Consent Agreement and Final Order.

The Complainant, by delegation from the Administrator of the United States Environmental Protection Agency (EPA), and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7. The Respondent is V.T. Asset Management, Inc., 8500 Shawnee Mission Parkway, Suite 200, Shawnee Mission, Kansas, 66201.

COMPLAINANT'S ALLEGATIONS

Complainant has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. part 745, subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Specifically, Complainant alleges:

Allegations Pertaining to All Counts

1. V.T. Asset Management, Inc. ("Respondent"), is a Missouri corporation.
2. For all periods of time relevant to the violations alleged herein, VLM Partnership, a Kansas general partnership ("Owner"), owned a residential apartment complex located at 8951 Reeder Street, Overland Park, Kansas, and known as Treehouse Apartments (the "Property").
3. The Property was constructed prior to 1978.
4. The Property is "target housing" as defined by 40 C.F.R. § 745.103.
5. Prior to the violations alleged herein, Respondent had entered into a contract or agreement with the Owner, for the purpose of managing the leasing of the Property.

Count I - Failure to Provide Pamphlet 10801 West 88th Terrace Contract

The facts stated in Paragraphs 1 through 5 above, are herein restated and incorporated.

6. On or about July 9, 2002, Respondent entered into a rental agreement (the "10801 West 88th Terrace Contract") with Michael Reeve, owner of Prestige Remodeling, for the lease of the Property, 10801 West 88th Terrace, for residential use.

7. Subsequent to the 10801 West 88th Terrace Contract, Michael Reeveer moved into 10801 West 88th Terrace, along with his two children, ages ten years old and one month old.

8. As a result of the 10801 West 88th Terrace Contract, the Owner became a "lessor", Respondent became an "agent", and Michael Reeveer became a "lessee", as those terms are defined by 40 C.F.R. § 745.103.

9. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

10. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.107(a)(1), or must personally ensure compliance with the same.

11. Both the Owner and Respondent failed to provide an EPA-approved lead hazard information pamphlet to Michael Reeveer prior to being obligated under the 10801 West 88th Terrace Contract.

12. Respondent's failure to ensure that an EPA-approved lead hazard information pamphlet was provided to Michael Reeveer prior to being obligated under the 10801 West 88th Terrace Contract is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115(a)(2) and Section 409 of TSCA.

Count II - Failure to Provide Pamphlet
10805 West 88th Terrace Contract

The facts stated in Paragraphs 1 through 5 above, are herein restated and incorporated.

13. On or about July 1, 2002, Respondent entered into a rental agreement (the "10805 West 88th Terrace Contract") with Ibrahim Fawaz, for the lease of the Property, 10805 West 88th Terrace, for residential use.

14. Subsequent to the 10805 West 88th Terrace Contract, Ibrahim Fawaz moved into 10805 West 88th Terrace, along with his three children, ages four, seven and eight years old.

15. As a result of the 10805 West 88th Terrace Contract, the Owner became a "lessor", Respondent became an "agent", and Ibrahim Fawaz became a "lessee", as those terms are defined by 40 C.F.R. § 745.103.

16. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

17. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.107(a)(1), or must personally ensure compliance with the same.

18. Both the Owner and Respondent failed to provide an EPA-approved lead hazard information pamphlet to Ibrahim Fawaz prior to being obligated under the 10805 West 88th Terrace Contract.

19. Respondent's failure to ensure that an EPA-approved lead hazard information pamphlet was provided to Ibrahim Fawaz prior to being obligated under the 10805 West 88th Terrace Contract is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115(a)(2) and Section 409 of TSCA.

Count III - Failure to Provide Pamphlet
8837 Bluejacket Street Contract

The facts stated in Paragraphs 1 through 5 above, are herein restated and incorporated.

20. On or about July 21, 2000, Respondent entered into a rental agreement (the "8837 Bluejacket Street Contract") with, Bryan and Susie Hunter, for the lease of the Property, 8837 Bluejacket Street, for residential use.

21. Subsequent to the 8837 Bluejacket Street Contract, Bryan and Susie Hunter moved into 8837 Bluejacket Street, along with their four children, ages one, four, and six years old, and five months old.

22. As a result of the 8837 Bluejacket Street Contract, the Owner became a "lessor", Respondent became an "agent", and Bryan and Susie Hunter became "lessees", as those terms are defined by 40 C.F.R. § 745.103.

23. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

24. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.107(a)(1), or must personally ensure compliance with the same.

25. Both the Owner and Respondent failed to provide an EPA-approved lead hazard information pamphlet to Bryan and Susie Hunter prior to being obligated under the 8837 Bluejacket Street Contract.

26. Respondent's failure to ensure that an EPA-approved lead hazard information pamphlet was provided to Bryan and Susie Hunter prior to being obligated under the 8837 Bluejacket Street Contract is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115(a)(2) and Section 409 of TSCA.

Count IV - Failure to Provide Pamphlet
9025 Reeder Street, Apartment 1603 Contract

The facts stated in Paragraphs 1 through 5 above, are herein restated and incorporated.

27. On or about April 23, 2002, Respondent entered into a rental agreement (the "9025 Reeder Street, Apartment 1603 Contract") with Richard and Lori Barry, for the lease of the Property, 9025 Reeder Street, Apartment 1603, for residential use.

28. Subsequent to the 9025 Reeder Street, Apartment 1603 Contract, Richard and Lori Barry moved into 9025 Reeder Street, Apartment 1603, along with their three month old child.

29. As a result of the 9025 Reeder Street, Apartment 1603 Contract, the Owner became a "lessor", Respondent became an "agent", and Richard and Lori Barry became "lessees", as those terms are defined by 40 C.F.R. § 745.103.

30. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

31. Pursuant to 40 C.F.R. § 745.115(a)(2), an agent must ensure that lessors have complied with 40 C.F.R. § 745.107(a)(1), or must personally ensure compliance with the same.

32. Both the Owner and Respondent failed to provide an EPA-approved lead hazard information pamphlet to Richard and Lori Barry prior to being obligated under the 9025 Reeder Street, Apartment 1603 Contract.

33. Respondent's failure to ensure that an EPA-approved lead hazard information pamphlet was provided to Richard and Lori Barry prior to being obligated under the 9025 Reeder Street, Apartment 1603 Contract is a violation of 40 C.F.R. §§ 745.107(a)(1) and 745.115(a)(2) and Section 409 of TSCA.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondent admits that Complainant has jurisdiction to bring this action pursuant to the statutory and regulatory provisions cited above, and neither admits nor denies Complainant's factual allegations above.

2. For purposes of this Consent Agreement, Respondent waives its right to contest Complainant's allegations above, and its right to appeal the Final Order accompanying this Consent Agreement.

3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R. part 745, subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule").

5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of Four Thousand Dollars (\$4000) to be paid within thirty (30) days of the effective date of the Final Order, in full resolution of this matter.

6. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 5 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the rate determined by the Secretary of the Treasury (two percent (2%) per annum for the period January 1, 2003, through December 31, 2003) on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by

31 U.S.C. § 3717(e)(2), a five percent (5%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 et seq., and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of Four Thousand Dollars (\$4000) to be paid within thirty (30) days of the effective date of the Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

EPA-Region 7
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251.

2. A copy of the check must be sent simultaneously to each of the following:

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101; and


Mike Gieryic
Office of Regional Counsel
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENT:
V.T. ASSET MANAGEMENT, INC.

Date 2-26-03

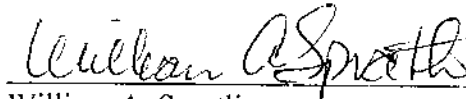
By


Pres.
Title

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

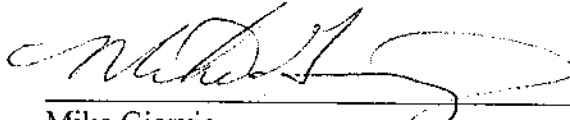
Date 3/3/03

By

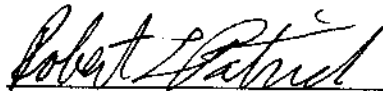

William A. Spratlin
Director
Air, RCRA, and Toxics Division

Date March 3, 2003

By


Mike Gieryic
Assistant Regional Counsel

IT IS SO ORDERED. This Final Order shall become effective immediately.


Robert L. Patrick
Regional Judicial Officer

Date March 4, 2003

IN THE MATTER OF V.T. Asset Management, Inc., Respondent
Docket No. TSCA-07-2003-0085

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Mike Gieryic
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Clyde G. Meise, Esq.
1125 Grand Boulevard, Suite 900
Kansas City, Missouri 64106

Dated: 3/7/3

Kathy Robinson by Debby White
Kathy Robinson
Regional Hearing Clerk